

**To:** Folkemer, Nathaniel[Folkemer.Nathaniel@epa.gov]  
**From:** Emmerson, Caroline  
**Sent:** Wed 2/5/2014 9:20:31 PM

Yesterday's Congressional hearings on the West VA chemical spill and TSCA Sections 4 and 8 add new momentum for TSCA Reform in the House and Senate. See excerpts from the Q & A sessions at both hearings below. Both hearings discussed the pros and cons of Senator Vitter's TSCA reform bill, S. 1009. House Energy and Commerce Committee Rs and Ds are currently working on a TSCA reform bill. Rep. DeGettee (D-OH) remarked that she is encouraged by her discussions with R members about the legislation.

Senate EPW hearing, Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Drinking Water Crisis

- Senator Ben Cardin (D-MD), Chair of Subcommittee on Water and Wildlife: We need better, more specific data in order to be able to respond to chemical releases. While TSCA is aimed at the proper classification of the 80,000 and growing number of chemicals out there and the SDWA is aimed at the delivery of safe water to communities, we are reluctant to preempt local governments. We are reluctant to take authority away from the States because it makes sense that the government closest to the problem should respond. But we need strong guidelines at the national level to strike a better balance for achieving federalism. This issue is being debated in current efforts to reform TSCA and is relevant here.

- Senator David Vitter (R-LA), Ranking Member of Committee on Environment and Public Works:

- Question to The Honorable Randy C. Huffman, Cabinet Secretary, West Virginia Department of Environmental Protection: I assume you agree that EPA should not have to affirmatively find "unreasonable risk" as it does now under the current TSCA law in order to move forward?

§ Answer: In the first 24-48 hours after the spill, the lack of information regarding the chemicals that spilled was frustrating to the concerned public who was told not to drink or use their water. Having information about chemicals impacting a public water supply is critical.

- Follow-up question to Mr. Huffman: These are lessons from this incident - it should be a big priority that states have a role in telling EPA what chemicals should be a high priority; the lack of health and safety information should be a criteria for prioritizing; and we should use a risk-based factor such as proximity to a drinking water system to prioritize chemicals. Do you agree?

§ Answer: Yes, that is absolutely true.

- Senator Barbara Boxer (D-CA), Chairman of Environment and Public Works Committee:

- Agree with Senator Vitter that as we look at the TSCA bill, we should say that if these chemicals are stored near a drinking water supply and could get into water, that chemical should be prioritized. This is not supported by the law as currently proposed.

- Agree with testimony of Mr. Erik D. Olson, Senior Strategic Director for Health and Food, Natural Resources Defense Council, who said that the problems with TSCA that are illustrated by this chemical spill in West Virginia will not be fixed by the Chemical Safety Improvement Act as introduced and may even make things worse. As written, the bill provides the public with the illusion of an effective federal program to regulate chemicals while tying the EPA in knots and taking away existing State authorities. The chemical spill in West Virginia is an illustration of why we need to strengthen the TSCA bill, it is not a justification for enacting a flawed bill.

- Question to The Honorable Natalie E. Tennant, Secretary of State, West Virginia: Through your offices, you deal with small businesses and register them. Will you look at which of these companies store chemicals?

§ Answer: We are attempting to add transparency and information to create a database for the public. We are looking at how to use that more in the wake of this spill.

House E & C Hearing, Testing of Chemicals and Reporting & Retention of Information under TSCA Sections 4 & 8:

Rep. John Shimkus (R-IL, Chairman): Would TSCA reform invalidate the practice of exempting some chemical substances from Section 8 reporting requirements? How does current TSCA law inhibit the practice of recycling?

Rep. Gene Green (D-TX): Should there be a minimum data requirement about toxicity before a chemical substance is introduced into commerce? Shouldn't we require that chemicals known to be hazardous to vulnerable populations such as children be categorized as high priority and subject to testing?

Rep. Tim Murphy (R-PA): How should we prioritize our review and testing of chemicals, keeping in mind that, "that which is not forbidden is permitted?" We need to get our prioritization scheme right. How do we protect chemical identity, but still get the risk information out there? Would adopting REACH precautionary principles be a good basis for TSCA reform, or would it be a big trade barrier to the U.S.?

Rep. Waxman (D-CA): Is there enough information available in most cases to allow EPA to make the type of screening decisions envisioned by the current TSCA reform proposal?

Rep. Latta (R-Ohio): How does collecting duplicative information about downstream processes such as recycling encourage recycling practices?

DeGette (D-CO): Should EPA have to go through a rulemaking every time it needs data? Can we make it easier for EPA to get data that is already available on existing chemicals?

Rep. McKinley (R-WV) was interested in understanding whether CBI claims on testing data required by TSCA section 8 are the key obstacle to EPA and other government agencies getting the info they need in order to respond to chemical spills such as the Elk River event.

Rep. Tonko (D-NY, Ranking Member): What kind of information is missing from pre-manufacture notices; why is this data gap a concern? Current TSCA reforms would allow EPA to not require testing of "low priority chemicals" – wouldn't this make the problem worse, if there is now no screen whatsoever of these chemicals? What are the concerns if no minimum testing is required?

Comment: Rep. McKinley's line of questioning highlights the failure of current law to get chemical testing & chemical safety information out to the public in a timely manner.

Rep. McNerney (D-CA) was also interested in understanding the extent to which CBI claims make it difficult for advocates and communities to get information on chemical safety.

Rep. Johnson (R-OH): Should we legislate a "minimum data set" on all chemicals, and would that be a reasonable standard to meet.